

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	3:18-cr-00016-RLY-MPB
	)	
JAMES POTTS, JR., (01),	)	
	)	
Defendant.	)	

**ENTRY ON MOTION TO SUPPRESS**

Law enforcement officers searched James Potts, Jr.'s residence and found several illegally owned firearms. The warrant authorizing the search said officers were looking for methamphetamine and marijuana when they were actually looking for cocaine and heroin. The warrant also did not authorize the search of any automobiles, yet officers searched a vehicle in the backyard and located a rifle. Potts contends these two shortcomings result in suppression. But law enforcement would have inevitably discovered the firearms in the house, and the vehicle was owned by Potts and located on the residence. The court therefore rejects his arguments.

**I. Background**<sup>1</sup>

On November 11, 2017, Terrance Robinson approached a Confidential Source ("CS") with the Evansville Vanderburgh County Drug Task Force in the parking lot of

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<sup>1</sup> The court held a hearing on Potts's Suppression motion, but the parties opted to present argument only; neither presented any evidence. (Filing No. 42). The court therefore takes the facts as uncontested from the Warrant and Affidavit.

the Tropicana Casino in Evansville, Indiana.<sup>2</sup> Not to talk Blackjack though. Robinson instead showed the CS a Glock pistol and two mason jars full of heroin with the hopes of getting the CS to buy them. The two traded cell phone and social media information and agreed to talk in the future.

Several weeks later, the CS told Task Force Officers Cliff Simpson and John Dyer with the Drug Enforcement Administration (DEA) about the encounter in the Tropicana parking lot. Officer Simpson directed the CS to follow up with Robinson and see if he wished to proceed with the sale. Later that day, the CS then met with Robinson under DEA surveillance. Robinson gave the CS a free sample of heroin and offered to sell a High Point 9mm handgun for \$180.00; a mini Draco AK47 pistol for \$1,200, and four ounces of heroin for \$6,500. The CS also observed Robinson carrying a handgun of his own. Robinson told the CS to let him know when he wanted to move forward with the purchase.

While Robinson peddled his contraband, law enforcement began investigating. Officer Simpson ran the license plate of the blue Jeep driven by Robinson and learned that the vehicle was rented to “James Potts, Jr.” The rental address on the rental application was 2711 S. Roosevelt Drive. The next day, Officer Simpson conducted surveillance on the residence at 2711 S. Roosevelt Drive (the “Residence”). He observed the same blue Jeep parked in the driveway.

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<sup>2</sup> At that time, law enforcement did not know Robinson’s identity. The Chicago Gang Unit confirmed Robinson’s identity later in the investigation.

The following week, on December 7, 2017, Officer Simpson and other DEA officers set up a controlled buy with Robinson and the CS. Officers observed Robinson and Potts leave the Residence and drive to the controlled-buy location. Once there, they met with the CS and exchanged heroin and a Ruger .22 caliber handgun for money. After the exchange, the CS debriefed with Officer Simpson and turned over the heroin and firearm purchased from Robinson.

Law enforcement learned a lot about Robinson and Potts over the next few months. The Chicago Gang Unit positively identified Robinson as the man who sold the CS contraband. The Chicago Gang Unit also confirmed that Potts and Robinson were confirmed members of the Gangsters Disciples out of Chicago. Officer Simpson searched Robinson's and Potts's criminal history and discovered both Robinson and Potts qualified as Armed Career Criminals. Officer Simpson also viewed Robinson's social media account and saw pictures of a Glock handgun, which looked similar to one the CS viewed on Robinson during the controlled buy. Frequent surveillance showed Potts and Robinson coming and going freely from the Residence.

On January 31, 2018, a female overdosed on heroin in downtown Evansville. Thankfully, responders revived her with Narcan. Law enforcement connected her overdose to Potts. Officers also found a tip from We-Tip<sup>3</sup> in 2016 that alleged Potts obtained heroin from sources in Chicago and was selling it in Evansville, Indiana.

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<sup>3</sup> We-Tip is an anonymous crime reporting hotline.

In February of 2018, the CS placed several calls to Robinson to inquire about drugs. During each of the calls, Robinson offered to sell cocaine and heroin for a particular price. Based on Robinson's cell phone location information, Officer Simpson confirmed that Robinson was located in or near the Residence during each of the calls.

Based on the investigation, Officer Simpson prepared a warrant and affidavit to search the Residence. The warrant sought evidence related to one crime: Conspiracy to Possess with Intent to Distribute Controlled Substances. It sought seven categories of evidence—four of which are relevant here:

- A. Documents relating to or memorializing the ordering, possession, purchase, storage, distribution, transportation and sale of *methamphetamine or marijuana* . . .
- B. Articles of personal property evidencing the existence of a conspiracy to possess and sell *methamphetamine or marijuana* . . .
- C. Articles of personal property evidencing the obtaining, secreting, transfer, expenditure and/or concealment of money and assets derived from or to be used in the sale of *methamphetamine or marijuana* . . .
- D. Proceeds and articles of personal property which are obtained from the sale of *methamphetamine or marijuana* . . .

Of course, the investigation did not involve methamphetamine or marijuana; it involved *heroin and cocaine*. The warrant nonetheless says methamphetamine and marijuana.

On February 12, 2018, the magistrate judge issued the warrant. Officers with the Evansville Police Department SWAT team executed it later that day. They detained Potts at the residence and arrested Robinson a few miles away during a traffic stop. After searching the home, officers found five handguns: one located in Potts's bedroom, one located in Robinson's bedroom, and three located in the kitchen. The officers also

located in the backyard a neglected 2003 Oldsmobile Alero. They questioned Potts, and he admitted he owned the vehicle. Officers then searched the vehicle and located a Hi Point 9mm rifle.

## **II. Discussion**

Potts now moves to suppress the evidence against him. He argues the firearms should be suppressed because the warrant did not describe with particularity the things to be seized. Specifically, the warrant sought evidence related to the possession and distribution of “methamphetamine and marijuana,” for which there was no probable cause. Potts also argues the rifle found in the vehicle should be suppressed because the warrant only authorized the search of the home. Each will be addressed in turn.

### **A. Firearms Located in the Residence**

The Fourth Amendment provides “no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV. Warrants unsupported by probable cause, *see e.g. United States v. Prideaux-Wentz*, 543 F.3d 954, 958 – 59 (7th Cir. 2008), or warrants that fail to describe the items to be seized with particularity, *see e.g. United States v. Sims*, 553 F.3d 580, 582 (7th Cir. 2009), violate the Fourth Amendment and usually result in suppression of the evidence. *United States v. Asgari*, 918 F.3d 509, 512 (6th Cir. 2019).

Not all violations, however, demand suppression. *Sims*, 553 F.3d at 584 – 85. Some are excused to prevent “reasonable errors from leading to disproportionately severe consequences.” *Asgari*, 918 F.3d at 512. A violation does not result in suppression when

the consequences for the defendant would have been exactly the same had law enforcement fully complied with the Fourth Amendment. *Sims*, 553 F.3d at 584 – 85; *United States v. Stefonek*, 179 F.3d 1030, 1035 (7th Cir. 1999) (citing *Nix v. Williams*, 467 U.S. 431 (1984)). This is called the “inevitable discovery” exception. *Sims*, 553 F.3d at 584.

And it applies with full force here.<sup>4</sup> Had the warrant sought evidence related to “cocaine and heroin” instead of “methamphetamine and marijuana,” Defendant would not have benefitted in any way. The magistrate judge still would have issued the warrant, and law enforcement still would have searched the Residence and found the firearms. Yes, the warrant should have been more accurate, but just like the defendants in *Sims* and in *Stefonek*, Defendant would have been no better off had the warrant complied with the Fourth Amendment. *Sims*, 553 F.3d at 584 (“[H]ad the police complied with the Fourth Amendment the consequences for the defendant would have been exactly the same as they were. The search would have been authorized, would have taken place, and would have been identical in scope . . . .”); *see also Stefonek*, 179 F.3d at 1035 – 36 (“Where a violation of the particularity requirement of the Fourth Amendment can be shown to have had no causal relation to the scope of the search or to the quantity or character of evidence seized, suppression of the evidence is not a proper sanction.”).

Defendant resists this conclusion. He argues there was no probable cause to search the Residence for *any* controlled substances. But probable cause only requires a

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<sup>4</sup> The court assumes without deciding that the warrant violates the Fourth Amendment. *See e.g. United States v. Pappas*, 592 F.3d 799, 804 (7th Cir. 2010).

“fair probability” that law enforcement would find contraband at the location to be searched, *Illinois v. Gates*, 462 U.S. 213, 238 – 39 (1983), and there was more than a fair probability that contraband would be found at the Residence. Within a few months, Robinson attempted to sell contraband several times to a confidential informant. Law enforcement traced Robinson to the Residence because of his license plate, and when officers staged a controlled buy, they observed both Robinson and Potts leave the Residence and return afterwards. Additional surveillance observed Robinson and Potts coming and going freely from the Residence. When officers called Robinson to inquire about contraband, his cell phone location information confirmed his location inside or around the Residence. This shows more than a fair probability that law enforcement would find contraband at the Residence. *See United States v. Haynes*, 882 F.3d 662, 666 (7th Cir. 2018).

Defendant insists the warrant contained stale and unreliable information because it included a We-Tip from 2016 and an attenuated (at-best) connection to a drug overdose. If the warrant contained nothing else, Defendant may have a strong argument. But, as just discussed, the warrant contained evidence of a controlled buy, recurring attempts to sell narcotics, and information that Robinson and Potts lived at the Residence. The details Potts complains of were just that: details. They do not invalidate the rest of the warrant which supports a finding of probable cause. *See Haynes*, 882 F.3d at 665 – 666.

Potts suggests there was only evidence tying Robinson to illegal distribution of narcotics, not *him* or *his residence*. But the court issued a search warrant, not an arrest

warrant. *Haynes*, 882 F.3d at 666. And the warrant contained a fair probability that drugs would be found at the Residence given law enforcement's entire investigation.


**B. Rifle Located in the Vehicle**

Law enforcement ordinarily cannot search an automobile without a warrant or without probable cause. *See United States v. Paige*, 870 F.3d 693, 701 – 03 (7th Cir. 2017); *see also United States v. Reed*, 319 F.Supp.3d 1112, 1119 (S.D. Ind. 2018). However, officers *are* permitted to search an automobile when they have a warrant to search a premises, and the vehicle is both (1) located on the premises and (2) controlled by the owner of the premises. *United States v. Percival*, 756 F.2d 600, 612 (7th Cir. 1985). Here, there is no dispute that law enforcement had a warrant to search the Residence, the vehicle was located in the backyard, and Potts owned the vehicle. The search was, thus, valid under existing Circuit precedent.

**III. Conclusion**

For the reasons set forth above, the court **DENIES** Defendant's Motion to Suppress (Filing No. 32).

**SO ORDERED** this 5th day of November 2019.

  
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RICHARD L. YOUNG, JUDGE  
United States District Court  
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record.